IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2435 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI CHHAGANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL WITH JITENDRA M PATEL for Petitioners

MR LR POOJARI, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/2001

ORAL JUDGEMENT

1. The petitioners originally owned some lands in the outskirts of village Gadkhol of Ankleshwar taluka of Bharuch district, which came to be acquired by the Government of Gujarat after following procedure under the Land Acquisition Act for the purpose of constructing a road on the southern bank of river Narmada. Compensation was fixed and, ultimately, paid to the land owners as per the award of the Special Land Acquisition Officer,

Bharuch, dated the 19th June, 1972. While awarding compensation, in paragraph 14 of the award (page 99 Mark-3) relating to apportionment, it was decided that as the village record shows that the lands are held on new and restricted tenure, only 2/3rd of the market value of the land should be paid to the occupants concerned and 1/3rd of the compensation of the land was set apart and apportioned in favour of the Government.

1.1 After the acquisition, for certain reasons, there was a change in the road plans and the Government no more required the lands of the petitioners acquired for the purpose. The lands remained idle. The petitioners, therefore, applied to the Government for a regrant of the lands as the lands were not useful to the Government for the purpose for which they were acquired. The Government, after considering the request made by the petitioners, passed an order on 3.7.1997 and decided to regrant the lands to the petitioners at a market price of Rs.1638/- per Are. The said decision was taken in light of paragraph 328 of the Land Acquisition Manual.

1.2 Following the said decision taken by the Government (Annexure-A), Collector, Bharuch, intimated the petitioners vide Annexure-B the amount payable by them in respect of their respective lands at the rate of Rs.1638/- per Are within ten days whereafter, appropriate orders would be passed for regrant of the lands. Therefore, the petitioners paid the amount fixed for regrant of the lands. Following that deposit of the amount, Collector, Bharuch, passed an order on 27-28/11.1997 re-granting the lands to the petitioners (Annexure-C). The Collector, while passing this order, observed that, the lands, at the time of original acquisition, were agricultural lands and, therefore, the lands are re-granted to the petitioners under the new tenure. The petitioners are aggrieved by the action on part of the Collector inserting the condition of new tenure while passing the formal order of regrant of the lands and they, therefore, approached this Court with this petition under Articles 226 and 227 of the Constitution, seeking deletion of the condition of new tenure from the order Annexure-C.

2. Learned advocate Mr. A.J. Patel appearing for the petitioners has broadly raised following contentions:-

(1) The Government while acquiring the land had deducted 1/3rd of the compensation payable to the petitioners as the lands were of new tenure as is

observed in the order Annexure-A. As a necessary consequence, the lands would be freed from the restrictions of new tenure.

(2) Mr. Patel submitted that, while re-granting the land, the Government has charged market price. The regrant of the lands would, therefore, be at par with a purchase by the petitioners from an individual and, therefore, the restrictions applicable to new tenure land could not have been imposed by the Collector.

(3) Mr. Patel submitted further that the Government, while deciding to regrant the lands at a market price fixed by it, had deemed it fit not to impose any condition of new tenure. The petitioners have deposited the market price as per that offer/order and the contract was, therefore, concluded. The Collector, therefore, could not have subsequently imposed a condition of new tenure which puts restriction on the rights of the petitioners in respect of the lands. Mr. Patel, therefore, urged that the petition may be allowed.

3. Learned Assistant Government Pleader, Mr. Poojari has opposed this petition. He places reliance on paragraph 328 of the Land Acquisition Manual. He has also relied on a resolution bearing No.934-49 dated 11.4.1951, which provides that while re-granting the land, it should be granted on terms agreed upon by the Government and the original owner seeking regrant of the land. But, ordinarily, it should on the same conditions (of the same tenure) as the land was prior to the acquisition. Mr. Poojari, therefore, submitted that the Government had right to fix the price and to decide the nature of tenure. The petitioners' case, therefore, may be rejected.

4. Having regard to the contentions raised before this Court, it is clear that this is no dispute regarding: (a) the factum of acquisition, b) deduction of 1/3 amount of compensation payable to the [petitioners and apportionment of the same to the Government while acquiring the land, (c) decision of regrant of land to the petitioners at a market price, (d) absence of any condition as to the regrant of land on new tenure in the decision of the Government, (e) absence of any such condition in the communication by the Collector, Bharuch to the petitioners calling upon them to deposit the market value of land for regranting the same to the

petitioners, and (f) insertion of condition of the regrant of land on new teunure by the Collector while passing the formal order regranting the land.

5. The only question that requires to be addressed to by this Court is whether the Collector could have, in absence of any such condition in the decision of the Government regranting the land, imposed the condition of new tenure while passing the formal orders regranting the lands.

6. The answer to the above question has to be an emphatic 'No' for the reasons stated in the paragraphs to follow.

7. In the first instance, if the order at Mk-X-3-page 99 is examined, it is amply clear that the Government has, while acquiring the lands and paying the compensation, deducted the amount equivalent to 1/3rd of the compensation payable to the land owners only in cases where the lands were of new tenure or restricted tenure and that too, for that reason only. The necessary implication of this action is that the new tenure land, after deduction of 1/3rd of the compensation amount and allocation of that amount to the Government, loses its character of being the land of new tenure and, therefore, the land at the time of acquisition, though was formerly of a new tenure, got converted into old tenure land by virtue of the amount being taken by the Government equivalent to 1/3rd compensation payable to the original land owner.

8. Apart from the above aspect, another aspect that favours the petitioners is that, while re-granting the land, the Government has charged market price from the petitioners - a price that was fixed by the authority unilaterally and not by negotiations. The position would, therefore, be that the petitioners have paid a full-fledged market price for the lands unilaterally decided by the Government and, therefore, the transaction of re-grant/purchase by the petitioners is for all practicable purposes a transaction at par with a transaction between two private individuals and, therefore, the condition of new tenure could not have been imposed by the Collector.

9. It is also clear that the decision of imposing condition of treating the lands as new tenure lands is taken by the Collector and not the Government because it is evident from the order at Annexure-A dated 3.7.1997 passed by the Government that it does not contemplate

imposition of any such condition. The communication by the Collector calling upon the petitioners to pay the respective prices of their respective lands at the rate of Rs.1638/- per Are (Annexure-B) also does not speak of any such restriction of tenure and suddenly, the condition is inserted into Annexure-C, obviously, without affording any opportunity to the petitioners of being heard. The transaction got concluded when the offer was made to the petitioners regarding regrant of land on payment of market price and the amount of the price was paid by the petitioners. No conditions thereafter could have been imposed while passing the formal order re-granting the lands. The petitioner has never been informed before passing the impugned order that regrant of land at market price is subject to restrictions of new tenure. The insertion of condition while passing a formal order or regrant of lands by the Collector amounts to change by the Collector in condition of regrant and not by the Government and, therefore, that action on part of the Collector cannot be upheld.

10. The contention raised by Mr. Poojari that the resolution of 1951 provides that, generally, the regrant should be of the same tenure as the land was at the time of acquisition of the land also cannot be accepted. The reason is that, if clause 1(3) on which Mr. Poojari relies is perused, it provides that the tenure (new or old) of the land at the time of regrant would be as per the terms agreed upon by the original owner and the Government. But, ordinarily, it should be the same tenure of the land which was there at the time of acquisition. In the instant case, as discussed above, it is true that the lands were of new tenure originally. But at the time of acquisition, an amount equivalent to 1/3rd of the amount of compensation payable to the petitioners was deducted and allocated to the Government as the lands were of new tenure or restricted tenure and, therefore, as a necessary implication, the tenure of the land, no more continued the characteristics of new tenure.

10.1 Apart from this, if the order passed by the Government (Annexure-A) is seen, there is no condition regarding the regrant of the land under new tenure. Even in Annexure-B, calling upon the petitioners to deposit the amount of market price, there is no reference whatsoever to the regrant of the lands under new tenure. Abruptly, while passing a formal order of regrant, the Collector imposes a condition of new tenure. The reason given therefor is that the land was agricultural land when it was acquired. The reason for imposing the

condition is not that the lands were of new tenure when they were acquired, but that the lands were agricultural lands. This reason is not contemplated in clause 1(3) of G.R. of 1951. Therefore, clause 1(3) of the resolution dated 11.4.1951 cannot lend any support to the action of the Collector impugned herein. The agreement between the landlord and the Government does not speak of regrant of land under new tenure. Differently put, regrant with restricted or new tenure was not contemplated therein.

10.2 The latter part of the clause providing that, ordinarily, the regrant should be under the same tenure as the land was at the time of acquisition cannot be made applicable in the instant case. Even if it is applied, for the reasons stated above, the lands lost their nature of being lands of new tenure because of deduction of 1/3rd amount of compensation payable to the land owner and allocation of the said amount to the Government at the time of acquisition. Under the circumstances, the petition deserves to be allowed and the condition re-granting the land under new tenure in the order impugned herein deserves to be deleted from the order.

11. In the result, the petition is allowed. The impugned order regranting the land would be read without the condition of regranting the lands under new tenure. Subject to the above change, the order would stand to be effective. Rule is made absolute accordingly. No costs.

[A.L. DAVE, J.]

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